

**Association of Apartment Owners of the Whaler on
Kaanapali Beach and Hotel, Restaurant Em-
ployees and Bartenders Union, Local 5, AFL-
CIO. Case 37-CA-1573**

March 20, 1981

DECISION AND ORDER

On November 6, 1980, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and counsel for the General Counsel filed an exception and a supporting brief, to which Respondent filed an answering brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order as modified herein.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Association of Apartment Owners of the Whaler on Kaanapali Beach, Lahaina, Maui, Hawaii, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Add the following as paragraph 2(f), relettering subsequent paragraphs accordingly:

"(f) Make Canterbury whole for any loss of earnings and benefits caused by discriminatory reduction of hours of work to the extent such reduction was not voluntary, as determined at the compliance stage of this proceeding, with interest on lost earnings."

2. Substitute the attached notice for that of the Administrative Law Judge.

¹ Counsel for the General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² We have affirmed the Administrative Law Judge's finding that Respondent was unlawfully motivated in reducing Canterbury's hours and therefore violated the Act. The remedy ordered by the Administrative Law Judge did not include backpay based on the Administrative Law Judge's finding that Canterbury desired and willingly agreed to the reduction in hours thereby suffering no detriment as a result. It is not clear from the record before us whether Canterbury desired and agreed to the substantial reduction in hours which in fact occurred. Accordingly, we award backpay to the extent the reduction in hours was involuntary as determined at the compliance stage of the proceeding.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate employees concerning their union attitudes or sympathies.

WE WILL NOT discontinue our services on behalf of the Fun Fund or announce a prohibition against breaks because of our employees' support of a union.

WE WILL NOT assign employees away from their customary tasks, reduce their hours, condition their continued employment upon acceptance of pay cuts and demotions in classification and type of work, or constructively discharge them (cause them to quit), because of their engagement in union and/or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in their exercise of rights under the Act.

WE WILL, should the employees so request, resume our activities on behalf of the Fun Fund, as those activities were constituted before October 3, 1979.

WE WILL inform our employees, by posting a notice where notices to employees customarily are posted, that the prohibition against breaks announced by Joe Sabo on October 4, 1979, has been retracted.

WE WILL offer to Robert Canterbury and Robert Williamson immediate and full reinstatement to the jobs they held before their constructive discharges on October 11 and November 13, 1979, respectively; more specifically, to the jobs they held before any alteration in job content was undertaken starting

with Canterbury on August 25, 1979; or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges; and make them whole for any loss of earnings and benefits suffered by reason of those discharges, with interest on lost earnings.

WE WILL make Canterbury and Williamson whole for any loss of earnings and benefits caused by discriminatorily inducing them to miss work from October 5 to 11, 1979, and October 31 to November 13, 1979, respectively, with interest on lost earnings.

WE WILL make Williamson whole for any loss of earnings and benefits suffered by reason of his hours having been cut as of October 8, 1979.

WE WILL make Canterbury whole for any loss of earnings and benefits suffered by reason of his hours being cut as of August 25, 1980, to the extent such cut was not voluntarily agreed to by Canterbury.

ASSOCIATION OF APARTMENT
OWNERS OF THE WHALER ON KAANAPALI BEACH

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This matter was heard before me in Wailuku, Maui, Hawaii, on May 20 and 21, 1980. The charge was filed on October 12, 1979, by Hotel, Restaurant Employees and Bartenders Union, Local 5, AFL-CIO, herein the Union. The complaint issued on December 28, 1979, was amended during the hearing, and alleges that Association of Apartment Owners of the Whaler on Kaanapali Beach, herein Respondent, committed certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, herein the Act, as amended.

I. JURISDICTION

Respondent is engaged in the operation of condominium apartments on Maui. In the year preceding issuance of the complaint, its gross income exceeded \$500,000, and it purchased supplies worth over \$28,000 from outside Hawaii. Respondent is an employer engaged in and affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

The complaint alleges that Respondent violated Section 8(a)(3) and (1) of the Act in several respects con-

cerning Robert Williamson and Robert Canterbury; that it further violated Section 8(a)(3) and (1) by ceasing to administer "certain employee benefit funds"; and that it violated Section 8(a)(1) by certain remarks of its managing agent, Herbert Nikola, and its superintendent of buildings and grounds, Joe Sabo.

IV. BACKGROUND FACTS

On August 16, 1979, Williamson and Harry Kama, a coworker, informed the Union that Respondent's maintenance employees were interested in exploring representation. That was followed by a meeting in Williamson's home on August 23, attended by 8 or 10 employees and 2 union officials. Additional organizing meetings were held in Williamson's home in the next few weeks. Williamson signed a union card August 23 and some of the other signers returned their cards to him to be submitted to the Union. Williamson also was instrumental in arranging a "debate" between union and management officials, challenged certain management assertions from the floor during the debate, and was the Union's observer in the NLRB election that ensued.

Canterbury signed a union card August 24, attended some if not most of the meetings at Williamson's, and concerned himself with ascertaining from the employees what changes they sought through organizing.

If it did not know before, Respondent admittedly learned of the organizational ferment "somewhere around the 26th or 28th of August," when Kama told Nikola that "the boys in the [maintenance department] were considering unionizing."¹ The Union petitioned for an NLRB election August 31.² The election followed on October 2. The Union won, 8 to 7, and a Certification of Representative issued October 11.

V. THE ALLEGED 8(A)(1) VIOLATIONS

A. Nikola

1. Allegation

The complaint alleges that, on October 1, Nikola "implied that it would be futile for employees to select the Union as their bargaining representative by telling employees that only wages as prescribed in the Master Labor Agreement would be paid if the Union were selected as their collective-bargaining representative," thereby violating Section 8(a)(1).

2. Facts

The morning of October 1, Nikola presided over a meeting of about nine maintenance employees. He displayed a chart listing Respondent's maintenance employees by name, after which were columns giving the classification of each, the present wage rate of each, the wage each would receive under the master agreement between the Union and the so-called class A hotels in Hawaii, the percentage of difference between the present wage of

¹ After approximating that the conversation with Kama was on August 26, 27, or 28, Nikola testified: "It was after an employees' meeting, which was August 21."

² Case 37-RC-2498.

each and the wage under the master agreement as of December 1, and the hourly amount each would pay as union dues.

Nikola recited the data on the chart stating, with reference to the column containing wage levels under the master agreement, that, "if you vote union, you will receive this." One of the employees, Robert Williamson, objected that the chart was "not valid at all"; that the employees would not be voting for a contract in the next day's election, but for union representation; and that wages "would be negotiable" should the Union win. Williamson elaborated that the Union would not be "bound" to the master agreement concerning its dealings with Respondent; that "a complete, separate contract" would be negotiated; and that the master agreement was only "an example" of what a labor agreement looks like.

Nikola persisted for a time that wages would be in conformity with the class A agreement, later amending that Respondent "might not have the same agreement," instead being class B because of the small size of its staff and the "lack of certain amenities that are normal in major hotels." At one point, Canterbury asked if it were true, as Williamson had stated, that wages would be negotiable. Nikola replied that they would.³

3. Conclusion

Nikola's intent in the early stages of the meeting plainly was to impart the impression that wages would be dictated by the master agreement, willy-nilly, should the employees vote the Union in. By the meeting's end, however, having been corrected by Williamson, he had conceded that wages would be negotiable. Assuming for argument that Nikola's conduct before this concession would have constituted a violation as alleged, it is concluded that the concession neutralized the situation and that the allegation therefore is without merit.

B. Sabo

1. Allegations

The complaint alleges that, on October 1, 1979, Joe Sabo, Respondent's maintenance superintendent, "interrogated . . . employees regarding their union membership, activities, and sympathies"; that, on October 4, he "threatened . . . employees that [Respondent] would discontinue granting breaks because they selected the Union as their bargaining representative"; and that he thereby violated Section 8(a)(1) of the Act in each instance.

³ Williamson and Canterbury are credited, as against Nikola's denial, that Nikola initially asserted that if the Union were voted in the employees would be paid in accordance with the class A master agreement. The elaboration accompanying Nikola's denial that he told the employees he thought they "should know . . . what rates were in" that agreement, as indicative of "typical wages," was lame and unconvincing. Nikola, on the other hand, is credited concerning Respondent's perhaps being a class B operation, as against William's testimony that Nikola said Respondent probably would be willing to negotiate only as a class B facility, meaning that wages probably would be less than in the class A agreement. Nikola simply was the more plausible and convincing of the two in this regard. Nikola and Canterbury agree that Nikola eventually conceded that wages would be negotiable.

2. Facts

After the meeting just described, Williamson and Canterbury went into the maintenance office, next door, where Sabo asked Williamson what he thought "about this union thing," and asked Canterbury how the meeting went and what his views were concerning the Union. Williamson did not reply to the question asked him, and Canterbury answered that he "really did not know" how he would vote.⁴

On October 4—2 days after the election—Williamson overheard an exchange between a coworker, Steve Wilson, and Sabo. Sabo, responding to Wilson's request that a bench be placed in the maintenance shop so the employees "could sit down" while on break, declared that, "as of yesterday, there will be no more breaks." Although this statement was not directed to Williamson, he thereupon ceased taking breaks, as did some but not all of the others. There is no evidence that those continuing to take breaks encountered any difficulty with management.⁵

3. Conclusions

It is concluded, without need for discussion or citation, that Sabo violated Section 8(a)(1) as alleged by asking Williamson what he thought "about this union thing," and by asking Canterbury his views concerning the Union.

It is further concluded that Sabo's remark to Wilson that, "as of yesterday, there will be no more breaks," violated Section 8(a)(1) as alleged. There can be little doubt, given the timing and lack of provocation otherwise, that this was a punitive lashing out in response to the adverse election result.

VI. THE ALLEGED 8(A)(3) AND (1) VIOLATIONS CONCERNING WILLIAMSON AND CANTERBURY

A. Allegations

1. Canterbury

The complaint alleges that, on September 1, 1979, Respondent "reduced the number of working hours and assigned more onerous tasks to 'Canterbury'; that, on October 6, it offered him 'a choice between a layoff or a lower paying job'; that, on October 6, it induced him to quit in circumstances amounting to constructive discharge; and that it, being motivated throughout by Canterbury's union and other protected activities, violated Section 8(a)(3) and (1) of the Act in each instance.

2. Williamson

The complaint alleges that, on October 4, 1979, Respondent "refused to allow . . . Williamson to continue

⁴ Williamson and Canterbury, respectively, are credited that Sabo questioned each as set forth. Sabo's generalized assertion that he "did not ask anyone about their union sympathies or beliefs" lacked conviction.

⁵ Williamson is credited, as against Sabo's denial, that Sabo made the remark to Wilson as set forth. Williamson for the most part was a more impressive witness than Sabo. That a no-break policy was not thereafter enforced does not militate against Sabo's making the remark, in pique, following the election. Wilson did not testify.

to take breaks"; that, on October 5, it "reduced the number of [his] working hours"; that, on November 5, it offered him "a choice between a layoff or a lower paying job"; that, on November 5, it induced him to quit in circumstances amounting to constructive discharge; and that it, being motivated throughout by Williamson's union and other protected activities, violated Section 8(a)(3) and (1) of the Act in each instance.

B. Facts

1. Additional background

The facility with which Respondent is involved consists of 360 living units, divided between two 12-story towers, plus common areas in the form of lobbies, hallways, stairwells, elevators, parking lots, grounds, etc. Of the 360 units, 120 are single-owner condominiums, 50 are multiple-owner or time-interval condominiums, and 190 are occupied on a rental basis. Respondent at all times has been responsible for the maintenance of all common areas. Until February 5, 1979, it also was fully responsible for the maintenance of the rental units; and, until July 16, 1979, it was similarly responsible for the time-interval units. On those dates, respectively, its responsibility for the rental units was reduced to 2 days per week, and for the time-interval units to servicing the air conditioning.

During a meeting of Respondent's board of directors, on July 27, 1979, there was a considerable discussion whether to retain the customary numerical strength of the maintenance crew, about 16, as opposed to contracting out. Nikola and Sabo both were opposed to contracting out, thinking it would be an economy to retain the status quo. Sabo reported, moreover, that "employee turnover" was troublesome; that "it is difficult to find suitable employees to replace those that leave." The board decided to promote the availability of the maintenance employees to work for individual condominium owners in other than common areas, on a time-and-materials basis, to defray the expense of keeping the complement at the existing level.

2. Still further background

On August 16—the day Williamson and Harry Kama made first contact with the Union—one of the employees, Dwight Cambra, told Williamson that Cambra was about to be laid off. The next day, August 17, Williamson and several coworkers, Canterbury among them, confronted Sabo about this. Williamson, acting as spokesman, announced that they were there pursuant to the grievance procedure set forth in Respondent's employee relations handbook. Sabo refused to deal with them, stating that "this is not the way to bring up a grievance."

After work on August 17, several of the employees met at Williamson's home, where they drafted a letter for Nikola concerning Cambra and decided to withdraw money from the employees' "Fun Fund" to finance the prosecution of a grievance on his behalf. The letter, later delivered to Nikola by Harry Kama, stated that it was from the worker's grievance committee; that the committee felt "there have been direct violations by management of the Employee Relations Handbook . . . and the

House Rules"; that "the first point that we would like to take up" was the Cambra matter; that Sabo had been "notified of this grievance . . . and he refused to comment on the subject"; and that the committee "would like this grievance settled by an impartial arbitration assigned by the Federal Med. Conc. Serv. as soon as possible."

This was followed by what was to have been a routine meeting between management and the maintenance employees on August 21. Nikola presided. After discussing some housekeeping matters, he raised the subject of the employees' letter, indicating that he did not understand "what this is." Williamson explained that the employees "were following the grievance procedure," to which Nikola declared that they "were not following the grievance procedure at all." Williamson replied that "the intent" of the letter was to notify Nikola "that within 10 days we would like an audience . . . to present a package of material" regarding Cambra's layoff.

Nikola repeated that the letter "does not follow the procedure," adding that he would like to have a list of those "involved in the Grievance Committee," and would like another meeting for a general discussion of the grievance procedure. He further stated that, as far as he was concerned, Cambra was not to be laid off and he did not foresee anyone else being laid off, either. As it turned out, Cambra was not laid off.

There being nothing more on that subject, someone asked why Sabo's son, Chris, was not at the meeting. Chris worked in the maintenance department. Sabo answered that Chris "was taking some time off, and . . . was only working two days a week."⁶ Canterbury asked if the rest of the employees had "the same opportunities to do the same thing." Nikola replied that, while each case would have to be handled individually, Respondent "would try to accommodate people under the same conditions." With that, as Williamson recalled, "a lot of people jumped in with complaints about Chris Sabo receiving preferential treatment." Williamson asked why Chris "gets paid to eat breakfast in the room⁷ . . . [and] to watch the Super Bowl." Sabo reacted by calling Williamson "an instigator," and mentioning that the employees had "stormed" into his office with their "demands" on August 17.⁸

By now, as Williamson recalled, the meeting was "really hot." Nikola closed the subject and restored calm by saying he would schedule a followup meeting regarding Chris Sabo when Chris "could be there to defend himself."

A followup meeting was held August 24. Chris Sabo was there; his father was not. Nikola opened the meeting by asking if anyone had anything to say. Williamson, referring to a piece of paper on which he had made notes, "read off a few of the grievances" that employees had mentioned to him concerning Chris. When Chris at-

⁶ Sabo testified that Chris had been encouraged to go from full to part time that summer because seasonal low occupancy had reduced the need for maintenance work.

⁷ I.e., the unit in which his parents lived.

⁸ Williamson is credited, as against Sabo's denial, that Sabo called him an instigator. As stated in an earlier footnote, Williamson for the most part was a more impressive witness than Sabo.

tempted to argue with him, Williamson said he did not know if the allegations were true, and that Chris should argue with those who made them. Canterbury questioned Chris about being paid while studying and taking 2-hour lunch breaks. Chris countered that Canterbury had worked only 4 of the 8 hours for which he had been paid the previous Sunday and that he spent Sundays with his girlfriend while being paid. After the meeting had gone on in this fashion for a time, Nikola ended it by saying that everything to be said had been said, and that "there could be some improprieties in the way Chris was handling the situation."

After the meeting, Nikola told Williamson that he, Williamson, had been "made a fool of." Williamson, irate that Kama had left early in the meeting leaving him to take "the brunt of it," agreed.

As previously mentioned, Nikola learned on August 26, 27, or 28, if not before, that "the boys . . . were considering unionizing," and the Union filed for an election August 31. On August 30, Nikola submitted a letter to the president of the board of directors, reporting his and Sabo's decision to give raises to six of the maintenance employees, and adding:

In addition, the change in type and amount of work within the General Maintenance Category leads to the reduction and possible elimination of two employees. One, in the more skilled maintenance category and the other in the specialized maintenance category, namely carpentry. These decisions will be made as the work load dictates with the Maintenance 2/C employee volunteering to go on a 2-day workweek starting September 1, 1979.

One of those contemplated by the quoted language from the letter, the one in the "skilled maintenance category," was Canterbury. The other, in the "specialized maintenance category," was Williamson. Asked why one or both were not terminated at this time, Nikola testified that Respondent's management consultant had "suggested that it would be better not to make any major changes with reduction of staff," because "it might be construed as anti-labor or anti-union practice."

Nikola's August 30 letter professedly was preceded by one to the president dated August 22, which, referring to the above-described employee meeting of August 21, stated:

I had a meeting with all the employees . . . yesterday afternoon. After reviewing their comments and opinions, I have initiated a study of the present personnel policies with regard to adjusting salaries, wages, benefits, and job assignments for any inequities that may be uncovered by my study.

I will meet with Joe Sabo on Wednesday, August 29, 1979, to make any necessary adjustments.

It is concluded that this document was of after-the-fact manufacture, to impart the impression that the "possible elimination of" Canterbury and Williamson alluded to in the August 30 letter stemmed from a process undertaken before Respondent learned of the union activity. This

conclusion derives from these considerations: The document dated August 22 to the contrary, there was nothing in the meeting of the 21st warranting a broad-gauge "study of present personnel policies"; the record contains no satisfactory explanation why, Nikola and Sabo seemingly being readily available to each other on a daily basis, they would not be meeting before August 29 to go over these matters; and, had the document dated August 22 been genuine, it would seem likely that the letter of August 30 would have referred to it in view of the latter's ostensible followup character.

3. Canterbury specifics

Canterbury began with Respondent, as a maintenance helper, in April 1978. His starting pay was \$5.71 per hour. When he quit, in October 1979, he was classified as a maintenance man 2nd class, and was paid \$6.65.⁹ His duties, until changed as described below, were "fixing about everything there was to fix"—ovens, dishwashers, air conditioning, toilets, etc. Two others, Harry Kama and Chris Sabo, also performed those duties. Both were more senior and of higher rank than Canterbury.

On August 25—the day after the second meeting in which Chris Sabo's alleged preferential treatment was discussed—Canterbury was instructed not to repair an oven previously assigned to him. He instead was assigned to polish light fixtures, an assignment lasting 2 or 3 days; and thereafter seldom was called upon to use his repair tools.

Shortly after the second meeting, as well, Joe Sabo reminded Canterbury of his remark in the August 21 meeting about Chris's working a 2-day week, and asked if Canterbury would like to do the same. Canterbury replied that he wanted to build a boat and so would "appreciate" fewer hours. Sabo stated: "Well, pretty soon I will be putting you on that, or I will be laying you off completely."¹⁰ Effective September 4, Canterbury's weekly hours were reduced from 40 to 16, assertedly because of lack of work and his willingness. No convincing evidence was supplied in support of the lack-of-work assertion, only generalizations.

On October 1, Canterbury asked Sabo how much longer the 16-hour schedule would last, explaining that he wanted more hours to enable the purchase of materials for the boat. Sabo said to check with him October 4. Canterbury did, and Sabo said that, while he was "unde-

⁹ Canterbury testified that he received a raise to \$6.85 in July 1979. A notice given him on October 5, informing him that his pay was being reduced to \$4.50, stated, however, that he then was receiving \$6.65. The notice would seem more reliable, and is credited.

¹⁰ Sabo is credited that Canterbury voiced a willingness to work fewer hours, so he could build a boat. Canterbury testified that, answering Sabo's question if he would like to work a 2-day week, he said he "could not live off of that." Sabo was the more convincing on the point, particularly since there is no indication that Canterbury objected when his hours subsequently were reduced; since Nikola credibly testified that Canterbury told him, "just a few days after" the reduction went into effect, that it "did not hurt" him because he was "planning to build a boat"; and since Nikola's August 30 letter to the president of the board, previously quoted, alludes to Canterbury's "volunteering to go on a 2-day workweek starting September 1, 1979."

cided," the existing arrangement probably would continue "for about another month."¹¹

On October 5, Sabo handed Canterbury a notice that, as of the next Monday, October 8, he was to be restored to full-time work, but was being reduced in classification to maintenance man 3rd class, at a wage of \$4.50. The notice explained:

Due to the reduction of work in the General Maintenance 2/C category, it is necessary to reduce the manpower hours of this section. However, due to your seniority & abilities, you qualify for a position in Gen. Maint. 3/C on a full-time basis starting this date.

After digesting the notice, Canterbury remarked that he did not think the action was in accord with the Employee Relations Handbook. Sabo countered that he should "bring in a lawyer" if that was the way he felt, then asked if he would accept the new situation. Canterbury said he would "be there."

Canterbury failed to report on October 8, or on the 2 following days, explaining that he felt he "was being cheated out of [his] job, and he wanted to find out what [he] could do about it."¹² When he finally reported, on October 11, Sabo "just blew up"—Canterbury's depiction. During the exchange that followed, Sabo asked if Canterbury was accepting the new assignment. Canterbury answered that he was not, prompting Sabo to declare: "That means you quit." Canterbury insisted that he was not quitting, and the exchange continued in that vein for a time, no one yielding. It finally ended when Sabo told Canterbury to go see Nikola.

Nikola, although saying he "had no idea" that Sabo was going to change Canterbury's job, stated: "I am not going to give you back your other job. So, what do you want to do?" Canterbury replied that he was quitting the \$4.50-an-hour job, but not his "normal job." He has not worked for Respondent since.

Sabo testified that the idea of offering Canterbury the new situation was "to give him fulltime work" and that he "could have stayed at two days a week." Sabo continued that the new job would have entailed "sweeping, moving rubbish, [and] cleaning"; that "maintenance [had] dropped off so drastically, all that was left was the cleaning"; that Canterbury was selected to be taken off maintenance because he was less senior than Kama or Chris Sabo; and that he hoped that maintenance "would pick back up," enabling Canterbury's return to his former job.

Regarding the reduction in pay, Sabo testified that \$4.50 is Respondent's lowest hourly rate, except for maids, and that even someone hired off the street for the tasks in mind for Canterbury would have received that amount. Sabo admittedly had the authority to offer Canterbury more. One of his explanations for not doing so was that he had reservations about Canterbury's attitude in the new job, so thought it prudent that he submit to a "temporary trial period, to see if it was going to work

out." Sabo conceded that Canterbury had "performed adequately" in his former classification, which involved a "more complicated type of work," and that he was "sure" Canterbury "could do" the new work, but that he was in doubt whether Canterbury "would" do the new work.

A second Sabo explanation for offering the minimum rate was that there is "just a general consensus that when you start at a certain category, you start at the bottom of the ladder and you work up." He added, however, that there is no established rule requiring this. Indeed, a groundsman hired in the 3d class category a few weeks after Canterbury quit was started at \$5 an hour, Sabo explaining that he had been recommended by outsiders. For that matter, Williamson was hired as a maintenance journeyman 1st class; and Canterbury himself, although hired as a maintenance helper, was started at \$5.71 per hour.

Canterbury's union and other activities have been previously described.¹³

4. Williamson specifics

Williamson began with Respondent, as a maintenance journeyman 1st class, in November 1978. His starting pay was \$7.32 per hour. When he quit, in November 1979, he was classified as a maintenance specialist, step 1, receiving \$8.05, when doing masonry work, and as a maintenance specialist, step 2, receiving \$7.65, when doing carpentry work. His duties, until changed as described below, involved constructing and repairing masonry walls and planters, mending damaged doors, replacing signs, and performing sundry cabinetry-type tasks for individual condominium owners on the time-and-materials basis mentioned earlier. Respondent had two other maintenance specialists, a painter, and a part-time electrician. Williamson was Respondent's first and only specialist carpenter. Sabo testified that his dual skills, in carpentry and masonry, made "a very good combination"—"you don't find that very often."

As previously described,¹⁴ Williamson overheard a conversation between a coworker, Steve Wilson, and Sabo on October 4 in which Sabo announced that, "as of yesterday, there will be no more breaks." Also as earlier mentioned, Williamson and some others thereupon ceased taking breaks, but there is no evidence that those continuing to take breaks encountered any difficulty with management.

On October 4, as well, Sabo directed Williamson to turn in all his outstanding work orders so Sabo "could re-analyze and see what was going on." Williamson thereupon was told that he would be doing no more work for individual owners, and two pending orders from owners for Murphy beds to be done by him, were canceled. Williamson credibly testified that the construction and installation of a Murphy bed could take as much as 2 weeks. Then, on October 5, Williamson received written notice that, as of the next Monday, October 8,

¹¹ Sabo is credited that Canterbury gave the need for boat materials as his reason for wanting more hours. Canterbury's testimony is silent on the point.

¹² Canterbury did not disclose what he did in this regard.

¹³ See secs. IV, and VI, B, *supra*.

¹⁴ See sec. V, B, *supra*.

his weekly hours were being cut from 40 to 24 "due to workload."

Williamson continued to do carpentry and masonry work, confined to common areas and on the reduced schedule, until October 31, when Sabo issued him a job order stating:

The stairways, inside & outside landings are in need of good cleaning. Start at the very top and work down; scrub in corners & center areas to remove all soil, wipe down any soil on walls or toe-kick as required. See me for proper cleaning solution, brushes & other cleaning gear.

This job order further stated, in explanation of the assignment: "Do [sic] to lack of carpentry or masonry work—I can try to give you other work (same pay rate of 7.65)." Williamson never before had received an assignment of this sort. It was the joint decision of Nikola and Sabo.¹⁵ Tasks such as this, which were part of Respondent's semiannual cleanup, previously were done by people specially hired for the purpose. Williamson credibly testified, moreover, that they used mops and hoses, rather than brushes. Instead of complying with the assignment, Williamson went home, first informing the office that he was leaving. He later called in that he was sick.

Williamson stayed off the job until November 13, when he and an official of the Union, Mel Shiroma, met with Nikola. Nikola said that he had been satisfied with Williamson's work, but that "there just was not enough work to keep" him busy as a carpenter and mason. Nikola continued that Williamson could stay on the payroll, as a groundskeeper or utility person, being paid "somewhere in the neighborhood" of \$5 per hour. Williamson replied that he instead would take a layoff. The next day, he turned in his tools and received his final check.

Sabo testified that the reduction in Williamson's hours, as of October 8, and his later removal from carpentry and masonry work were necessitated by a major diminution in that work resulting from two developments: The substantial elimination of Respondent's responsibility for the maintenance of rental and time-interval units, discussed above;¹⁶ and a decision of the board of directors, prompted by complaints from outside contractors, that Respondent cease making its employees available to the individual owners on a time-and-materials basis.

Sabo is not credited that the former development had a significant impact on the amount of work for Williamson. Its two steps occurred in February and July—months before the personnel actions in question. Beyond that, Sabo eventually conceded that he did not know if the removal of the rental units from Respondent's area of responsibility had an effect ("I did not say it had an effect; I said it could."); and that the time-interval units had generated "very, very little work" of a carpentry/masonry nature. Sabo continued that, when Williamson

was hired, it was not anticipated that he would work in the time-interval units. Nor is Sabo credited concerning the supposed decision of the directors. Not only was he unconvincingly vague about the alleged contractor complaints, but there is no documentation that the directors ever made such a decision, even though Respondent chose to introduce certain minutes of the board's deliberations for other purposes, and those minutes reveal that the meetings were recorded in meticulous detail.

The record indicates that some of the work formerly done by Williamson was done by Chris Sabo during the time that Williamson was on a reduced schedule. Thus, Chris Sabo repaired a door on one of Williamson's off days, and told Williamson that he did carpentry work when Williamson was gone. Joe Sabo admittedly knew of this disclosure by Chris to Williamson. He testified that it was untrue, and that Chris had explained to him that he "was trying to agitate" Williamson when he said it. This testimony was lamely rendered and is not credited.¹⁷

Williamson credibly testified that, with the exception of one incident, he and Sabo communicated only by note after the election. That incident, on or about October 12, concerned Williamson's having reported to Respondent's security force that a saw was missing. Harsh words ensued between Williamson and both Sabos, during which Joe Sabo asked Williamson if he was going to quit, declared to Chris that there is "no sense talking to a smartass like" Williamson, and called Williamson "the biggest troublemaker" he had ever seen.¹⁸

C. Conclusions

It is concluded, as concerns this aspect of the case, Respondent violated Section 8(a)(3) and (1) substantially as alleged. Among the aggregate of factors contributing to this conclusion are these:

(a) Williamson and Canterbury were prominent in their union and protected concerted activities. Williamson was the lead employee spokesman in the confrontations with management regarding both the Cambra and Chris Sabo matters. There can be no doubt, moreover, that the employees' activities relative to those matters, being concerted and pertaining to terms and conditions of employment, come under the protection of the Act. Williamson was conspicuously pronoun, as well, joining with Kama in making initial contact with the Union, volunteering his home for organizational meetings, collecting and submitting signed union cards, and being the Union's election observer.

Canterbury, while less active than Williamson, nevertheless was vocal concerning Chris Sabo during the August 21 and 24 meetings, engaging in an accusatory exchange with Chris in the latter, and was overtly pronoun.

(b) Respondent seemingly linked both Williamson and Canterbury with the organizational effort. Nikola testi-

¹⁵ Sabo testified: "We were trying to do anything to keep him there and keep him on the payroll." He added: "Possibly a magic wand or a miracle" would create "some more carpenter work for the man."

¹⁶ See sec. VI, B, *supra*.

¹⁷ Chris Sabo did not testify.

¹⁸ Williamson is credited over Sabo's denial that Sabo made the "trouble maker" remark. As earlier noted, Williamson generally was the more impressive witness, and his rendition of this incident carried the greater suasive thrust.

fied that they were not terminated on or about August 30, coincident with his letter to the president of the board alluding to their "possible elimination," and with an alleged drop-off in work, out of fear that "it might be construed as anti-labor or anti-union practice."

(c) The timing of the actions concerning Canterbury and Williamson suggests a causal relationship between their union and/or other protected activities and those actions. On August 25—the day after the second meeting over Chris Sabo—Canterbury was relegated to the shining of light fixtures, never again to perform his customary repair functions; and was told, at or about the same time, that he soon would be laid off or reduced to a 2-day week.

On August 30, by then admittedly aware of the union campaign, Nikola dispatched the letter to the president of the board speaking of the "reduction and possible elimination of" Canterbury and Williamson; after which, the Union having filed for an election on August 31, Canterbury's weekly hours were cut from 40 to 16 as of September 4.¹⁹

On October 4—2 days after the election—Joe Sabo announced that there would be "no more breaks," directed Williamson to turn in his outstanding work orders so he could "re-analyze" them, and severely curtailed the work available to Williamson by cancelling pending orders from individual owners and discontinuing Williamson's availability to them.

On October 5—three days after the election—Canterbury was told that, as of October 8, his hourly wage was being cut from \$6.65 to \$4.50 and that his classification was being reduced from maintenance man 2d to 3d class; and Williamson was told that, as of October 8, his weekly hours were being cut from 40 to 24.

On October 31—a little over 3 weeks after his hours had been cut—Williamson was assigned to give the stairways a "good cleaning," an assignment never before given him, in lieu of doing his customary carpentry/masonry chores; and, on November 13, was told he could stay on the payroll, but as a groundskeeper or utility person, at an hourly wage of about \$5 rather than \$7.65/\$8.05.

(d) Respondent's stated reasons for its actions concerning Canterbury and Williamson bespeak pretext. There is no convincing evidence—indeed, very little evidence at all, other than broad generalization—to support Respondent's contention that a significant reduction in work attended the cut in Canterbury's hours and his reassignment from repair work to "sweeping, moving rubbish, [and] cleaning."

Sabo's assertion that Canterbury's pay was cut because of reservations about his attitude and willingness to do his newly assigned tasks suggests that Sabo was more intent upon inducing a bad attitude—perhaps thereby causing Canterbury to quit—than in addressing an existing state of mind. Sabo's second explanation for the cut in pay—that one starts "at the bottom of the ladder"

when placed in a new job category—likewise is rejected, there being no substantial evidence of such a practice.

With respect to the reduction in Williamson's hours, his being assigned away from carpentry/masonry work, and the eventual conditioning of his continued employment upon acceptance of a severe pay cut and demotion to a utility or groundskeeper classification, Sabo's testimony was rejected earlier that these measures derived from a lack of work. As then noted, he first cited the elimination of responsibility for the rental and time-interval units as taking away work, only to concede that those developments were of slight if any moment; and his testimony of a directors' decision, inspired by the complaints of outside contractors, to stop placing the employees at the disposal of individual owners was discredited because of his vagueness and the absence of documentation.

While Respondent did stop doing work for the owners, and this undoubtedly did cut into the things for Williamson to do, there is no convincing evidence that this was compelled by circumstances outside its control. The inference thus is warranted that, just as the cut in Canterbury's pay seemingly was designed to induce rather than address a bad attitude, provoking him to quit, the cessation of work for the owners was meant to create a situation giving colorable grounds to initiate the process finally causing Williamson to quit.

(e) The after-the-fact manufacture of the alleged Nikola letter dated August 22, to convey the impression that the "possible elimination of" Canterbury and Williamson alluded to in Nikola's August 30 letter was the continuation of a process begun before Respondent learned of the union activity, speaks eloquently and almost conclusively of unlawful motivation.

(f) As against Respondent's contentions of a lack of work, Sabo expressed concern as recently as the July 27 directors' meeting over turnover and the difficulties in finding suitable replacements.

(g) Finally, even though both Canterbury and Williamson quit, they are entitled to claim the benefits of unlawful discharge. Respondent, by so radically altering the content of their jobs and their pay, virtually forced them to quit, and it is plain from the foregoing recital that it did so because of their union and protected concerted activities. *Fidelity Telephone Company*, 236 NLRB 166 (1978); *Crystal Princeton Refining Company*, 222 NLRB 1068, 1069 (1976).

VII. THE ALLEGED 8(A)(3) AND (4) VIOLATIONS CONCERNING THE BENEFIT FUNDS

A. Allegation

The complaint alleges that, on October 3, 1979, Respondent "discontinued payroll deductions of, and the management of, certain employee benefit funds" because of the employees' union and other protected activities, thereby violating Section 8(a)(3) and (1) of the Act.

B. Facts

The fun fund, previously mentioned in connection with the anticipated Cambra grievance, was a creation of

¹⁹ Even though Canterbury desired and willingly agreed to this reduction in hours, the inference is strong that Respondent was unlawfully motivated in proposing and implementing it. It is concluded, therefore, that the arrangement violated Sec. 8(a)(3) and (1) as alleged, Canterbury's willingness notwithstanding.

the employees and had been in existence for several months before the events in question. It was financed by payroll deductions at the rate of 10 cents per hour from the checks of participating employees. The idea, on the fund's inception, was to use the accrued interest to pay for a Christmas party, at which time the principal would be recalled for whatever purpose the employees chose. Until October 3, the fund was administered by Respondent's office staff. The employees had asked Nikola, at the beginning, if Respondent would oversee payroll deductions and otherwise administer it, and he agreed—"it was a courtesy and I saw no reason not to do it." Nikola, Joe Sabo, and Kama were authorized to make withdrawals from the fund's bank account.

On October 3—the day after the election—Nikola turned over the fund's bankbook and other records to Harry Kama. Nikola explained to Kama that, having "heard some insinuations that there might be some misuse of the fund," he no longer wanted to be involved with it. There is no convincing evidence that such insinuations in fact had been advanced, Nikola testifying vaguely that, "just about the time I made the decision to turn the fund over . . . I had heard that someone felt that we were not crediting the interest properly, or not properly handling the funds."

A day or so after Nikola turned over the materials, the employees voted to discontinue the fund, after which their contributions were returned to them. During the meeting culminating in the vote to discontinue, Joe Sabo told the employees that there would be no more payroll deductions.

C. Conclusions

It is concluded that Respondent's services on behalf of the fun fund were a job-related benefit to the employees. Cf. *Laredo Coca Cola Bottling Company*, 241 NLRB 167 (1979); *Seattle-First National Bank*, 176 NLRB 691 (1969). It is further concluded that the discontinuance of those services, coming the day after the election and accompanied by an unconvincing stated rationale, was prompted by the adverse election result. It follows that this conduct violated Section 8(a)(3) and (1) as alleged.

CONCLUSIONS OF LAW

Respondent violated Section 8(a)(1) on October 1, 1979, when Joe Sabo asked Williamson what he thought "about this union thing," and asked Canterbury his views concerning the Union and on October 4, when Sabo declared that, "as of yesterday, there will be no more breaks."

Respondent violated Section 8(a)(3) and (1) as follows:

(a) By assigning Canterbury away from repair work on and after August 25, 1979; by reducing his weekly hours from 40 to 16 as of September 4; by conditioning his continued employment upon acceptance of an hourly pay cut from \$6.65 to \$4.50 and demotion to maintenance man 3d class, to be effective October 8; and by constructively discharging him on October 11.

(b) By reducing Williamson's weekly hours from 40 to 24 as of October 8, 1979; by conditioning his continued employment upon acceptance of an hourly pay cut from

\$7.65/\$8.05 to about \$5 and demotion to a utility or groundskeeper classification; and by constructively discharging him on November 13.

(c) By discontinuing its services on behalf of the fun fund on October 3, 1979.

(d) By Sabo's announcement of a prohibition against breaks, stated October 4, 1979.²⁰

Respondent did not otherwise violate the Act as alleged.

THE REMEDY

With two exceptions, the remedy shall be standard for the violations found. The exceptions are these:

(a) Even though Respondent was unlawfully motivated in reducing Canterbury's hours, and therefore violated the Act in that regard, Canterbury desired and willingly agreed to that arrangement. Consequently, having suffered no detriment from this misconduct, Canterbury is entitled to no backpay because of it.

(b) After being informed on October 5 that his pay was to be cut and the content of his job altered, Canterbury stayed away from work for a time before finally quitting on October 11. Similarly, Williamson left work October 31 upon being assigned to clean stairways, staying away until he finally quit on November 13. Since these absences were unlawfully induced, as part of an overall discriminatory scheme, Canterbury and Williamson are entitled to recompense for any wages and benefits lost as a result.

ORDER²¹

The Respondent, Association of Apartment Owners of the Whaler on Kaanapali Beach, Lahaina, Maui, Hawaii its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union attitudes or sympathies.

(b) Discontinuing its services on behalf of the fun fund or announcing a prohibition against breaks because of its employees' support of a union.

(c) Assigning employees away from their customary tasks, reducing their hours, conditioning their continued employment upon acceptance of pay cuts and demotions in classification and type of work, and constructively discharging them (causing them to quit), because of their engagement in union and/or protected concerted activities.

(d) In any like or related manner interfering with, restraining, or coercing its employees in their exercise of rights under the Act.

2. Take this affirmative action:

²⁰ While subsequent events indicate that Sabo probably did not truly intend to prohibit breaks, Williamson and certain others took him at his word, and there is no evidence of a retraction. It is appropriate to conclude, therefore, that the ban was imposed.

²¹ All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Should the employees so request, resume its activities on behalf of the fun fund, as those activities were constituted before October 3, 1979.

(b) Inform its employees, by posting a notice where notices to employees customarily are posted, that the prohibition against breaks announced by Joe Sabo on October 4, 1979, has been retracted.

(c) Offer to Robert Canterbury and Robert Williamson immediate and full reinstatement to the jobs they held before their constructive discharges on October 11 and November 13, 1979, respectively; more specifically, to the jobs they held before any alteration in job content was undertaken starting with Canterbury on August 25, 1979; or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings and benefits suffered by reason of those discharges, with interest on lost earnings.²²

(d) Make Canterbury and Williamson whole for any loss of earnings and benefits caused by discriminatorily inducing them to miss work from October 5 to 11, 1979, and October 31 to November 13, 1979, respectively, with interest on lost earnings.

²² Interest, wherever provided for herein, shall be computed in accordance with *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Backpay shall be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950).

(e) Make Williamson whole for any loss of earnings and benefits suffered by reason of his hours having been cut as of October 8, 1979.

(f) Preserve and, upon request, make available, to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all records necessary to analyze the amounts of backpay and benefits owing under the terms of this Order.

(g) Post at its facility in Lahaina, Maui, Hawaii, the notice which is attached and marked "Appendix."²³ Copies of the notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

To the extent that merit has not been found, the complaint is dismissed.

²³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."